

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LEVESTER HOWARD
(Claimant)

PRECEDENT
DISABILITY DECISION
P-D-394
Case No. D-78-26

S.S.A. No.

Office of Appeals No. OAK-D-11205

The claimant appealed from the decision of the administrative law judge which held that the claimant was not entitled to disability benefits in that he had not filed a timely claim for benefits.

STATEMENT OF FACTS

The claimant was last employed as a burner on October 1, 1976, at which time he was laid off for lack of work. Between that date and April 28, 1977, the claimant was on the out-of-work list at his union. He did not file a claim for unemployment insurance at that time.

On April 28, 1977, the claimant was injured in an automobile accident. He received medical treatment and filed his claim for disability benefits, which was made effective October 14, 1977.

The claimant testified that he did not file his claim earlier because he was unaware of the disability program. His employer did not post any notices concerning disability benefits or otherwise furnish pertinent information. The claimant did not discuss disability benefits with his union or his doctors. The claimant's union assists members in filling out disability claim forms but does not post any information concerning such claims.

The claimant's education and reading ability are limited. In 1974 or 1975 he filed a claim for unemployment insurance benefits and was issued a claimant's handbook which contained some information about disability insurance benefits.

The administrative law judge concluded that good cause was not established for the late filing of the claim in that the claimant had notice of the disability program by reason of the handbook issued during his prior unemployment insurance claim, and by virtue of the fact that union assistance was available to him.

REASONS FOR DECISION

Section 2706.1 of the Unemployment Insurance Code provides that a first claim for disability benefits shall be filed not later than the twentieth consecutive day following the first compensable day of unemployment and disability with respect to which the claim is made, which time shall be extended upon a showing of good cause.

Section 2706 of the code provides in part that each employer shall post and maintain in places readily accessible to individuals in his service, printed statements concerning regulations relating to claims for disability benefits and shall make copies thereof available to each such individual.

We cannot agree that the claimant had prior notice of the disability program. Such notice cannot be inferred from the receipt of a claimant's handbook in connection with an unemployment insurance claim two or three years earlier. Individuals claiming unemployment insurance benefits are not primarily concerned about disability benefits. Neither can such notice be inferred from the fact that the claimant's union would provide assistance in filing disability claims. For any claimant the Department will provide assistance; but the availability of such assistance is of little use when one does not know of the disability program.

The important factor in this case is that the claimant's employer did not comply with its statutory duty to post the required information or otherwise inform the claimant concerning the filing requirements for disability claims. Since the claimant was not otherwise

aware of the disability program, we hold that the claimant had good cause for the late filing of his disability claim and that his claim should be backdated in order that he may secure the benefits to which he is entitled.

There is no indication that the claimant was hospitalized or that he is claiming additional (hospital) benefits. Under such circumstances, section 2627(b) of the code requires a waiting period of seven consecutive days during each disability benefit period, with respect to which waiting period no benefits are payable. The first day of disability was April 28, 1977. Therefore, no benefits are payable prior to May 5, 1977.

DECISION

The decision of the administrative law judge is reversed. The claimant is entitled to have his claim backdated and to receive disability benefits commencing May 5, 1977 if he is otherwise eligible.

Sacramento, California, June 13, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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